It may be added that, even if a corporation is only a legal fiction, nevertheless that fiction is of legislative origin and should be respected by the courts. The first authority that a court may, when it sees fit, disregard the fiction was the Deveaux case, and it would be hard to-day to find champions for the reasoning of the court in that case. The doctrine is destructive of reasonable certainty in corporation law, for it amounts to saying that the courts will respect or disregard the corporate entity from case to case as they think fit. Nor is such a doctrine necessary in order that justice be done; if persons in control of corporations use their power of control for an improper purpose, or if a corporation confederates with other legal units to accomplish an improper purpose, the courts can easily give appropriate relief without disregarding the corporate entity.

EDWARD H. WARREN.

A HISTORY OF THE BANKRUPTCY LAW. By F. Regis Noel. Washington, D. C.: Charles H. Potter and Company. 1919. pp. iv., 209.

There is room for a good history of bankruptcy legislation, and a knowledge of the subject is not without practical utility. Especially was this true during the early years of the present federal bankruptcy statute, when there was little precedent for the guidance of the courts except what might be found under earlier laws. How little the history of similar statutes was in the minds of the judges may be seen, for instance, from the reasoning in the dissenting opinion in *Wilson* v. *Nelson*, 183 U. S. 191, 211, 22 Sup. Ct. Rep. 74. In that case the passive suffering or permitting a creditor to obtain a preference by legal proceedings was held to be an act of bankruptcy. Four judges dissented, approving the decision below of *In re Nelson*, 98 Fed. Rep. 76, and *Duncan* v. *Landis*, 106 Fed. 839 (C. C. A.), one of the grounds being that passively permitting a preference could not be an *act* of bankruptcy, since an act must necessarily be active. If the dissenting judges and the lower courts taking the same view, had realized that every bankruptcy statute in England and the United States for centuries had made certain kinds of passive indications of insolvency a ground for bankruptcy proceedings, and had classified these passive causes as acts of bankruptcy, the futility of their reasoning on this point would have been apparent.

It is unfortunate that Mr. Noel's book cannot be commended. In his introduction he assumes that the purpose of bankruptcy legislation has been the relief of insolvent debtors, and this error vitiates many of his conclusions. He does, indeed, state the provisions of the early statutes, which show that their purpose was partly to give the creditors of an insolvent an added remedy, and partly to punish the debtor; but he fails to realize the persistence of this view. He says of the provision for a discharge, which first found a place in the Statute of Anne: "At that time debt was not looked upon as a crime, as Englishmen of an earlier and quite frequently of the present age regard it, and for the first time the rights of the debtor as well as those of the creditor were considered in formulating a law," and adds: "Lord Loughborough sometime earlier detected this tendency and in Sill *versus* Worswick, 1 H. Bl. 665, established a departure from the criminal view, remarking that, 'the law, upon the act of bankruptcy being committed, vests his property upon a just consideration, and not as a forfeiture, not as a supposition of crime committed, not as a penalty.'"

If the author had realized the true character of early bankruptcy legislation, he could not have supposed that Lord Loughborough's statement was prior to the Statute of Anne. The full meaning of the facts that voluntary bankruptcy was not allowed in England until the reign of George the Fourth, and that the relief of poor debtors was achieved originally through so-called

insolvent laws and not the bankruptcy laws; that, prior to the nineteenth century, for the debtor to procure a friendly creditor to file a petition in bankruptcy in order that the debtor might obtain a discharge was called a fraud on the statute; that in *Nelson* v. *Carland*, 1 How. 265, the constitutionality of voluntary bankruptcy in the United States was drawn in question on the ground that no such proceedings were known at the time when the Constitution was adopted, escapes the author. So that although the résumé of the successive bankruptcy statutes is given, the effect of them is not clearly perceived.

Moreover, there is little indication of any examination of English bankruptcy decisions. The development, which was not statutory in its origin, of the most characteristic doctrine of bankruptcy, that of preference, is hardly touched upon.

A comparatively full account of colonial legislation and practice and of the proceedings in the Constitutional Convention is given, and the latter half of the book summarizes briefly the four successive bankruptcy statutes of the United States.

The lack of an index must be noted as a final criticism.

SAMUEL WILLISTON.

THE UNSOUND MIND AND THE LAW. By George W. Jacoby, M.D. New York: Funk & Wagnalls. 1918. pp. v, 424.

To the student of the law the title of this book is a signpost on a path to disappointment; for upon the problems that have vexed the lawyer through the generations the book sheds little or no light and for their solution it offers no constructive suggestion. Indeed, whatever may be its merits as a textbook for psychiatric experts, — and the authority of the author in his own field warrants the assumption that those merits are great, — its relation to the juristic aspects of the problems is slight.

Such interest as it may have for the lawyer arises primarily from the clarity of its style. For a book devoted to a series of topics so highly technical as the causes and conditions of mental aberration, the methods and technique of diagnosis, the symptoms and effects of the various types of mental diseases and anomalies, it is unusually readable, and its fifty odd pages devoted to the development of the science of psychiatry from the days of Hippocrates make interesting reading for those in search of general information. Yet the absence of a glossary of the medical terms with which it is inevitably interspersed renders it doubtful whether it will serve as the instrument for the enlightenment of the lay (non-medical) public for which, as appears from the introduction, it was designed.

The omission of such a glossary is an instance of the rather remarkable defect of imagination which, on the assumption that the book was designed for the purposes which its title and introduction suggest, characterizes it as a whole; for the author seems strangely oblivious of the nature of the juristic problems involved in the ascertainment of mental states and in the determination of their relation to the capacity or responsibility of the individual whose acts are the subject of litigation. Rather curiously, he seems to suppose that what he terms the "inadequacies or inequities of the partly antiquated law" result solely from the ignorance and perversity of the lawyers, and to imagine that, through the generations, jurists and practitioners have resolutely shut their eyes to the discoveries of the psychiatrists and have refused to concern themselves with the problem of adjusting substantive law and procedure to the advance of the science.

"Why is it," he says, "that psychiatry, which could and should be of so